

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
AT CHARLESTON

BETTY MCGHEE,

Plaintiff,

v.

Civil Action No. 2:07-0222

WEST VIRGINIA EMPLOYERS'  
MUTUAL INSURANCE COMPANY,  
a West Virginia corporation  
d/b/a BRICKSTREET MUTUAL  
INSURANCE COMPANY and  
BRICKSTREET ADMINISTRATIVE  
SERVICES, GUARDIAN LIFE  
INSURANCE COMPANY OF AMERICA,  
a corporation, and COMMERCIAL  
INSURANCE SERVICE, INC., a  
West Virginia corporation

Defendants.

MEMORANDUM OPINION AND ORDER

Pending is the motion to remand Count I, filed on April 26, 2007. Also pending is the motion of Commercial Insurance Service Inc. ("CIS") to dismiss Count I, filed on May 21, 2007.

Plaintiff in this action and plaintiff in the case styled Sally Stewart v. West Virginia Employers' Mutual Insurance Company, a West Virginia corporation d/b/a Brickstreet Mutual Insurance Company and Brickstreet Administrative Services, Guardian Life Insurance Company of America, a corporation, and Commercial Insurance Service, Inc., a West Virginia corporation,

Civil Action No. 2:07-168 ("the Stewart action") share the same counsel. The complaints and the motions to remand in this case and in the Stewart action are virtually identical in all material respects with the exception of the plaintiffs' names and the dates of each plaintiff's alleged disabilities. The defendants in both actions are the same, and the memoranda of the defendants in both this case and the Stewart action are substantially similar.

For the reasons explained in the memorandum opinion and order entered in the Stewart action this same day, it is, accordingly ORDERED as follows:

1. The motion to remand Count I be, and it hereby is, denied;

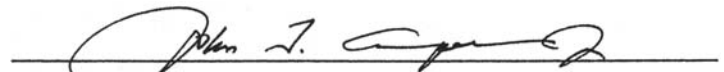
2. The motion to dismiss Count I be, and it hereby is, denied in all respects except that it is granted insofar as it asks that particular allegations of fraud as hereinabove set out be pled; and

3. Plaintiff be, and she hereby is, directed to file a motion to amend Count I with respect to the fraud claim against CIS by adding the above-stated allegations required by Rule 9(b), accompanied by a proposed amended complaint, on or before

December 20, 2007, should she wish to pursue the fraud prong of Count I against CIS, in default of which the fraud claim as to CIS will be ordered dismissed.

The Clerk is directed to forward copies of this memorandum opinion and order to all counsel of record.

DATED: December 5, 2007

  
John T. Copenhaver, Jr.  
United States District Judge